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No.: ICC-01/11-01/11

Date: 15 May 2014

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

SITUATION IN LIBYA

**IN THE CASE OF *THE PROSECUTOR* v. *SAIF AL-ISLAM GADDAFI and
ABDULLAH AL-SENUSSI***

Public Document

**Decision requesting Libya to provide submissions on the status of the
implementation of its outstanding duties to cooperate with the Court**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Counsel for Saif Al-Islam Gaddafi

John R.W.D. Jones

Counsel for Abdullah Al-Senussi

Benedict Emmerson

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Ahmed El-Ghani

Philippe Sands

James Crawford

Payam Akhavan

Wayne Jordash

Michelle Butler

Amicus Curiae

Competent authorities of Libya

REGISTRY

Registrar

Herman von Hebel

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Judge Silvia Fernández de Gurmendi, Single Judge responsible for carrying out the functions of Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) in relation to the present case,¹ issues the following decision requesting Libya to provide submissions on the status of the implementation of its outstanding duties to cooperate with the Court.

1. On 26 February 2011, the United Nations Security Council adopted Resolution 1970, whereby it referred the situation in Libya since 15 February 2011 to the Prosecutor of the Court and decided that “the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor”.² Following the referral of the situation and upon request by the Prosecutor,³ the Chamber, on 27 June 2011, issued a warrant of arrest against, *inter alia*, Saif Al-Islam Gaddafi (Mr Gaddafi)⁴ and Abdullah Al-Senussi (“Mr Al-Senussi”).⁵

2. As repeatedly observed by the Chamber,⁶ following the order contained in the Security Council Resolution 1970 requiring Libya to “cooperate fully” with the Court, Libya is under a duty to cooperate with the Court and to comply with requests for cooperation made by the Court. Nevertheless, Libya has failed to discharge, in particular, three obligations arising from three

¹ “Decision designating a single judge”, 13 February 2014, ICC-01/11-01/11-511.

² S/RES/1970 (2011).

³ ICC-01/11-4-Red.

⁴ Pre-Trial Chamber I, “Warrant of Arrest for Saif Al-Islam Gaddafi”, ICC-01/11-01/11-3.

⁵ Pre-Trial Chamber I, “Warrant of Arrest for Abdullah Al-Senussi”, 27 June 2011, ICC-01/11-01/11-4.

⁶ See “Decision on Libya’s Submissions Regarding the Arrest of Saif Al-Islam Gaddafi”, ICC-01/11-01/11-72, paras 12 and 13; “Decision on the postponement of the execution of the request for surrender of Saif Al-Islam Gaddafi pursuant to article 95 of the Rome Statute”, ICC-01/11-01/11-163, paras 27 to 30; and Pre-Trial Chamber I, “Decision on the ‘Urgent Application on behalf of Abdullah Al-Senussi for Pre-Trial Chamber to order the Libyan Authorities to comply with their obligations and the orders of the ICC’”, 6 February 2013, ICC-01/11-01/11-269, para 21.

requests by the Court for cooperation with respect to the case against Mr Gaddafi and Mr Al-Senussi.

3. The first outstanding obligation is to immediately surrender Mr Gaddafi to the Court. On 5 July 2011, the Registrar, pursuant to an order of the Chamber,⁷ notified the Libyan authorities of a request for cooperation (the "Surrender Request"), which asked for their assistance in arresting Mr Gaddafi and surrendering him to the Court.⁸ Mr Gaddafi was arrested in Libya on 19 November 2011.⁹ On 1 May 2012, Libya challenged the admissibility of the case against Mr Gaddafi before the Court.¹⁰ As of that moment, and until the Chamber's subsequent rejection of this challenge, Libya postponed the execution of the Surrender Request in conformity with article 95 of the Rome Statute (the "Statute").¹¹ On 31 May 2013, the Chamber rejected the admissibility challenge and declared the case against Mr Gaddafi admissible before the Court,¹² resulting in the termination of the postponement of the execution of the Surrender Request within the terms of article 95 of the Statute. Furthermore, the Appeals Chamber rejected Libya's request to suspend the effect of the decision on the admissibility of the case pending determination of the appeal and recalled Libya's obligation to surrender Mr Gaddafi to the Court.¹³ Therefore, as of 31 May 2013, Libya has

⁷ Pre-Trial Chamber I, "Decision on the 'Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI'", 27 June 2011, ICC-01/11-01/11-1, pp. 41-42.

⁸ ICC-01/11-01/11-5 and ICC-01/11-01/11-25-Conf.

⁹ See ICC-01/11-01/11-34-Anx.

¹⁰ ICC-01/11-01/11-130-Conf and annexes. A public redacted version is also available (ICC-01/11-01/11-130-Red).

¹¹ See Pre-Trial Chamber I, "Decision on the postponement of the execution of the request for surrender of Saif Al-Islam Gaddafi pursuant to article 95 of the Rome Statute", 1 June 2012, ICC-01/11-01/11-163.

¹² Pre-Trial Chamber I, "Decision on the admissibility of the case against Saif Al-Islam Gaddafi", ICC-01/11-01/11-344-Conf. A public redacted version is also available (ICC-01/11-01/11-344-Red).

¹³ Appeals Chamber, "Decision on the request for suspensive effect and related issues", 18 July 2013, ICC-01/11-01/11-387.

been under an obligation to comply with the Surrender Request. However, Mr Gaddafi's surrender to the Court is yet to be effected.

4. The second outstanding obligation is to return to the Defence of Mr Gaddafi the originals of the materials that were seized from the former counsel for Mr Gaddafi by the Libyan authorities during her visit to Mr Gaddafi in Zintan, and destroy any copies thereof, in compliance with a decision of this Chamber dated 1 March 2013.¹⁴ The relevant request for cooperation was transmitted by the Registrar, through the designated channel of communication, to the Libyan authorities on 4 March 2013.¹⁵ However, the originals of the privileged documents seized from the Defence in Zintan are still in possession of the Libyan authorities and have not been returned to the Defence of Mr Gaddafi. Equally, no information about the destruction of all copies of the concerned material has been received from Libya so far.

5. The third outstanding obligation is to organise a legal visit to Mr Al-Senussi by his Defence. On 23 January 2013, the Registrar, at the request of the Defence of Mr Al-Senussi, transmitted a request for the Libyan authorities to cooperate in facilitating a visit from the Defence team to Mr Al-Senussi in Tripoli.¹⁶ On 6 February 2013, the Chamber issued a decision requesting Libya's cooperation in the arrangement of a privileged visit to Mr Al-Senussi by his Defence.¹⁷ On 8 February 2013, the Registrar transmitted to the Libyan authorities the request for cooperation, in compliance with this decision.¹⁸ On 27 September 2013, the Chamber, noting the difficulties encountered by the Court and Libya in reaching agreement on a

¹⁴ Pre-Trial Chamber I, "Decision on the 'Urgent Defence Request'", 1 March 2013, ICC-01/11-01/11-291.

¹⁵ See ICC-01/11-01/11-346 and annexes attached thereto.

¹⁶ See ICC-01/11-01/11-294-Conf-Exp and Annex 1 attached thereto.

¹⁷ Pre-Trial Chamber I, "Decision on the 'Urgent Application on behalf of Abdullah Al-Senussi for Pre-Trial Chamber to order the Libyan Authorities to comply with their obligations and the orders of the ICC'", 6 February 2013, ICC-01/11-01/11-269.

¹⁸ See ICC-01/11-01/11-294-Conf-Exp and Annex 2.

comprehensive Memorandum of Understanding to regulate cooperation between the Court and Libya, issued a decision identifying the minimum content of an *ad hoc* arrangement between Libya and the Registrar for the purposes of the visit to Mr Al-Senussi by his Defence, requiring such an arrangement to address the practical modalities of the visit.¹⁹

6. The Registrar, acting as the channel of communication in respect of requests for cooperation made by the Chamber in accordance with rule 176 of the Rules of Procedure and Evidence, has on several occasions reminded the Libyan authorities of the three pending requests for cooperation and of Libya's concomitant obligations. Nevertheless, to date, none of these three obligations has been fulfilled, nor has Libya indicated the existence of any problems impeding or preventing the execution of these cooperation requests and, as mandated by article 97 of the Statute, consulted with the Court in order to resolve any such matter. In the same vein, Libya has raised no issue with respect to the legality of any of the cooperation requests as is its prerogative under regulation 108 of the Regulations of the Court.

7. In case of non-compliance with obligations to cooperate the Court with respect to situations which have been referred to the Prosecutor by the Security Council, one of the tools available to the Court is to make a finding of non-cooperation by the State and refer the matter to the Security Council. However, prior to any such step being taken, regulation 109 of the Regulations of the Court mandates that "the Chamber shall hear from the requested State".

8. The Single Judge considers that in order to determine the course of action in relation to Libya's non-compliance with its outstanding obligations

¹⁹ Pre-Trial Chamber I, "Decision concerning a privileged visit to Abdullah Al-Senussi by his Defence", 26 September 2013, ICC-01/11-01/11-456.

to cooperate with the Court, it is appropriate to invite Libya to provide its observations thereupon.

FOR THESE REASONS, THE SINGLE JUDGE

REQUESTS Libya to inform the Chamber, by Wednesday, 28 May 2014, as to the status of the implementation of: (i) its duty to immediately surrender Mr Gaddafi to the Court; (ii) its duty to return to the Defence of Mr Gaddafi the originals of the materials that were seized from the former Defence counsel for Mr Gaddafi by the Libyan authorities during her visit to Mr Gaddafi in Zintan, and destroy any copies thereof; and (iii) its duty to arrange a privileged legal visit to Mr Al-Senussi by his Defence.

Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Single Judge

Dated this Thursday, 15 May 2014

At The Hague, The Netherlands